

Dennis F. Dunne (admitted *pro hac vice*)  
Samuel A. Khalil (admitted *pro hac vice*)  
MILBANK LLP  
55 Hudson Yards  
New York, New York 10001-2163  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219

*and*

Gregory A. Bray (SBN 115367)  
Thomas R. Kreller (SBN 161922)  
MILBANK LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Telephone: (424) 386-4000  
Facsimile: (213) 629-5063

*Counsel for the Official Committee  
of Unsecured Creditors*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC  
COMPANY,

Debtors.

Civil Case No. 19-cv-05257 (JD)

Bankruptcy Case No. 19-bk-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' STATEMENT  
REGARDING RESPONSE OF OFFICIAL  
COMMITTEE OF TORT CLAIMANTS TO  
DEBTORS' MOTION TO ESTABLISH  
ESTIMATED AMOUNT OF FIRE VICTIM  
CLAIMS FOR ALL PURPOSES**

Date: May 21, 2020

Time: 10:00 a.m. (Pacific Time)

Place: Courtroom 11

Judge: Hon. James Donato

1 The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) appointed  
 2 in the above-captioned chapter 11 cases, by its attorneys Milbank LLP, respectfully states as  
 3 follows regarding the *Response of the Official Committee of Tort Claimants to Debtors’ Motion*  
 4 *Pursuant to 11 U.S.C. §§ 105(A) and 502(C) to Establish Estimated Amount of Fire Victim Claims*  
 5 *for All Purposes of the Chapter 11 Cases* (the “TCC Response”) [Docket No. 295]:<sup>1</sup>

### 6 STATEMENT

7 Consistent with the settlement embodied in the TCC RSA,<sup>2</sup> the Court should estimate the  
 8 Fire Victim Claims at an aggregate value of \$13.5 billion. But the Court should **not** order the  
 9 additional relief requested by the TCC, including making any determinations regarding the form  
 10 and quantum of currency that the recovery on these allowed Fire Victim Claims should receive  
 11 under the Debtors’ chapter 11 plan.

12 In December 2019, the Court described the settlement of the Fire Victim Claims embodied  
 13 in the TCC RSA (proposed at that time) as the “gold standard” for estimation data points and  
 14 signaled that estimating the Fire Victim Claims at the settled amount **would conclude the Court’s**  
 15 **charge with respect to estimation.** See Dec. 17, 2019 Hr’g Tr. at 6:18-23 (Court: “I don’t think  
 16 there’s anything left [to do] here either way . . . settlement gets approved, you’re done. Settlement  
 17 is not approved, you have effectively estimated the loss at \$13.5 billion. So what else is there to  
 18 do?”).

19 No party took issue with the Court’s view and, indeed, counsel for the TCC was ready to  
 20 close the estimation proceedings in December. See *id.* at 9:15-22 (Court: “[I]s there any reason  
 21 just not to close up shop and send you on your way to . . . the Bankruptcy Court[?]”; Mr. Julian:  
 22 “I don’t believe there is any reason not to do that.”).

23 The TCC did not advise the Court then, as it does now, that the TCC believes there **is** more  
 24 to do; that we are **not** done. According to the TCC, the Court should not only estimate the  
 25 aggregate amount of Fire Victim Claims at \$13.5 billion for allowance purposes, but **also** should

26  
 27 <sup>1</sup> On April 3, 2020, the Creditors’ Committee filed a *Statement and Reservation of Rights* [Docket No. 300],  
 reserving its rights to respond to the TCC Response.

28 <sup>2</sup> Capitalized terms not defined herein have the meanings ascribed to them in the *Debtors’ and Shareholder*  
*Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020* (the “Plan”) [Bankr. Docket No.  
 6320].

1 prescribe the actual **recovery** on account of those Claims, including the form and quantum of  
 2 currency that recovery should take. *See* TCC Response at 12 (asking the Court to order that the  
 3 estimated \$13.5 billion claim amount must be “funded with \$6.75 billion in cash, the PG&E stock  
 4 valued at \$6.75 billion . . . so long as \$6.75 billion of cash and the \$6.75 billion of PG&E stock  
 5 each have a value of \$6.75 billion”). The TCC asserts that the Court must include these additional  
 6 provisions in its order because they would be consistent with the “intent of the Parties” as  
 7 purportedly reflected in, among other places, “the plain terms” of the TCC RSA. TCC Response  
 8 at 6. “Anything less,” according to the TCC, “will prevent the Bankruptcy Court from being able  
 9 to find that the Debtors’ Plan is fair, equitable, and in good faith under Section 1129 of the  
 10 Bankruptcy Code...” *Id.*

11 This request for an unwarranted (and unnecessary) expansion of the Court’s jurisdiction  
 12 must be denied. The order partially withdrawing the reference from the Bankruptcy Court  
 13 authorized this Court to decide “[t]he 11 U.S.C. § 502(c) estimation of unliquidated personal injury  
 14 and wrongful death claims against Debtors for all purposes under 28 U.S.C. § 157(b)(2).” Order  
 15 Adopting Recommendation for Withdrawal of Reference of Proceeding in Part, entered Aug. 22,  
 16 2019 (the “Withdrawal Order”) [Bankr. Docket No. 3671] at 2:9-11. And 11 U.S.C. § 502(c)  
 17 authorizes the Court to “estimate . . . contingent or unliquidated claims” for purposes of **allowance**.  
 18 Neither the Withdrawal Order nor the statute **further** authorizes the Court to dictate the form or  
 19 value of the **recovery** on the estimated allowed amount of the Fire Victim Claims.<sup>3</sup>

20 Those matters, even if they were relevant here (and they are not), are governed by the TCC  
 21 RSA, over which the **Bankruptcy Court** has retained exclusive jurisdiction. *See* TCC RSA [Bankr.  
 22 Docket No. 5038-1] at § 8(b). Thus, the many pages the TCC devotes to the alleged breaches of  
 23 the TCC RSA (including complaints about the value and the currency of the recovery on the settled  
 24 Fire Victim Claims) are not properly addressed to this Court. *See* TCC Response 3-7. Nor, as  
 25  
 26

27 <sup>3</sup> Case law is in accord. *See, e.g., In re N. Am. Health Care, Inc.*, 544 B.R. 684, 689 (Bankr. C.D. Cal. 2016) (“the  
 28 claims should be estimated in the aggregate”); *In re Fed.-Mogul Global, Inc.*, 330 B.R. 133, 154 (D. Del. 2005)  
 (estimating claims in the “aggregate allowable amount”); *In re Garlock Sealing Tech. LLC*, 2017 WL 2539412,  
 at \*9 (W.D.N.C. June 12, 2017) (noting the court estimated the aggregate amount of claims); *In re G-I Holdings,*  
*Inc.*, 323 B.R. 583, 622-23 (Bankr. D.N.J. 2005) (same).

1 should be obvious, should the Court make these extracurricular determinations to influence the  
2 Bankruptcy Court's determinations under Section 1129 of the Bankruptcy Code.

3 The TCC Response provides no basis to depart from, or expand on, what the Withdrawal  
4 Order, the Bankruptcy Code, the Court, and even the TCC acknowledge is the Court's narrow  
5 charge with respect to estimation. Accordingly, the Court should limit its order on the Debtors'  
6 motion to estimating the Fire Victim Claims at the settlement amount embodied in the TCC RSA  
7 (\$13.5 billion). Beyond this, as the Court correctly observed after learning of the parties' aggregate  
8 settlement, there is simply nothing "left to do here."<sup>4</sup>

9  
10 DATED: April 10, 2020

MILBANK LLP

11 /s/ Gregory A. Bray

DENNIS F. DUNNE

SAMUEL A. KHALIL

GREGORY A. BRAY

12 THOMAS R. KRELLER

13  
14 *Counsel for the Official Committee of*  
15 *Unsecured Creditors*

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 <sup>4</sup> If the Court accepts the TCC's invitation to order the form and quantum of recoveries that Fire Victim Claimants  
28 should receive, then the Court should also condition its order on the satisfaction of the conditions precedent set  
forth in the TCC RSA, including that the class of the Fire Victim Claims votes in favor of the Plan and that the  
Plan is confirmed by June 30, 2020. Doing otherwise may adversely and irreversibly limit the Plan recovery  
available to the Debtors' unsecured creditors if the Plan fails for any reason.